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ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS A.H.

In the Matter of the Mortgage Broker License of: No. 09F-BD049-BNK

**REGAL MORTGAGE COMPANY
DBA REGAL ONLINE MORTGAGE AND
DAVID WARE, PRESIDENT**
10105 E. Via Linda, Suite 103
Scottsdale, AZ 85258

NOTICE OF HEARING

Petitioners.

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137, 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for January 13, 2009, at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-905; and (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Thomas Shedden, at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
16 made by a court reporter or by electronic means. Any party that requests a transcript of the
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
19 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioners shall file a written answer **within twenty (20)**
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioners' position
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
4 Hearing. If the answering Petitioners are without or are unable to reasonably obtain knowledge or
5 information sufficient to form a belief as to the truth of an assertion, Petitioners shall so state, which
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioners
7 intend to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioners
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioners will be**
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
12 true and admitted and the Superintendent may take whatever action is appropriate, including
13 suspension, revocation, denial of Petitioners' license or affirming an order to Cease and Desist and
14 imposition of a civil penalty or restitution to any injured party.

15 Petitioners' answer shall be mailed or delivered to the Arizona Department of Financial
16 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
17 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
18 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
19 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

20 **Persons with disabilities may request reasonable accommodations such as interpreters,**
21 **alternative format or assistance with physical accessibility.** Requests for accommodations must
22 be made as early as possible to allow time to arrange the accommodations. If accommodations are
23 required, call the Office of Administrative Hearings at (602) 542-9826.

24 FACTS

25 1. Petitioner Regal Mortgage Company dba Regal Online Mortgage ("Regal") is a New
26 Mexico corporation authorized to transact business in Arizona as a mortgage broker, license number

1 MB 0904728, within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Regal's business is that
2 of making, negotiating, or offering to make or negotiate loans secured by Arizona real property,
3 within the meaning of A.R.S. § 6-901(6).

4 2. Petitioner David Ware ("Mr. Ware") is the President of Regal and is authorized to
5 transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-901(6), as
6 outlined within A.R.S. § 6-903(E).

7 3. A September 27, 2007 through October 2, 2007, examination of Regal, conducted by the
8 Department, revealed that Regal and Mr. Ware:

- 9 a. Failed to conduct the minimum elements of reasonable employee investigations
10 before hiring employees, specifically:
- 11 i. Petitioners failed to obtain a completed and properly dated Employment
12 Eligibility Verification Form ("I9") before hiring eight (8) employees;
 - 13 ii. Petitioners failed to collect complete Immigration Reform Control documents
14 prior to hiring five (5) employees;
 - 15 iii. Petitioners failed to obtain a completed and signed employment application
16 ("EA") before hiring two (2) employees;
 - 17 iv. Petitioners failed to obtain a signed statement and detailed information
18 regarding an applicant's felony convictions ("SS") before hiring nine (9)
19 employees;
 - 20 v. Petitioners failed to consult with the applicant's most recent or next most
21 recent employer ("EI") before hiring nine (9) employees;
 - 22 vi. Petitioners failed to inquire regarding an applicant's qualifications and
23 competence for the position ("QI") before hiring nine (9) employees;
 - 24 vii. Petitioners failed to obtain a current credit report from a credit reporting
25 agency ("CR") before hiring eight (8) employees;
 - 26 viii. Petitioners failed to obtain an explanation for derogatory credit before hiring

- 1 five (5) employees; and
- 2 ix. Petitioners failed to correct this violation from their previous examination;
- 3 b. Failed to reconcile and update all records specified in A.A.C. R20-4-917(B) in each
- 4 calendar quarter, specifically:
- 5 i. Petitioners failed to reconcile Regal's accounts since June 2007; and
- 6 ii. Petitioners failed to correct this violation from their previous examination;
- 7 c. Failed to maintain a complete record containing all documents as required;
- 8 specifically:
- 9 i. Petitioners failed to provide minutes for review at the Department's
- 10 examination;
- 11 d. Failed to maintain all required information on their list of all executed loan
- 12 applications or executed fee agreements, specifically:
- 13 i. Petitioners' loan list failed to contain a provision for entering the application
- 14 date or name of loan officer;
- 15 ii. Petitioners' loan list failed to include declined and withdrawn applications;
- 16 iii. Petitioners' loan list failed to have separate entries for disposition and
- 17 disposition date; and
- 18 iv. Petitioners failed to correct this violation from their previous examination;
- 19 e. Petitioners failed to maintain originals or clearly legible copies of all mortgage loan
- 20 transactions for not fewer than five years, specifically:
- 21 i. Petitioners failed to keep and maintain the withdrawal, cancellation, or denial
- 22 notice for two (2) borrowers;
- 23 f. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
- 24 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
- 25 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
- 26 under these acts, specifically:

- i. Petitioners failed to provide complete Truth in Lending ("TIL") disclosures to five (5) borrowers;
 - ii. Petitioners failed to disclose the Yield Spread Premium ("YSP") on the Good Faith Estimate ("GFE") to four (4) borrowers;
 - iii. Petitioners failed to provide complete, updated Servicing Transfer ("ST") disclosures to five (5) borrowers; and
 - iv. Petitioners failed to correct this violation from their previous examination;
- g. Failed to keep and maintain at all times correct and complete records as prescribed by the Superintendent, specifically:
- i. Petitioners failed to maintain complete records, evidenced by the fact that it was unable to provide any back-up documents;
- h. Failed to use a written agreement, signed by all parties, when accepting fees and/or documents in connection with mortgage loan applications, specifically:
- i. Petitioners failed to maintain a statutorily correct written agreement in the loan files of at least four (4) borrowers; and
 - ii. Petitioners failed to correct this violation from their previous examination;
- i. Failed to ensure that the Responsible Individual maintained a position of active management, specifically:
- i. Petitioners' Responsible Individual, David Ware, failed to be in active management as evidenced by his failure to ensure Petitioners' compliance with Arizona Statutes and Rules governing mortgage brokers;
- j. Failed to notify the Superintendent prior to maintaining branch records at their principal place of business, specifically:
- i. Petitioners failed to notify the Superintendent that they have maintained branch office records at their principal place of business office, financials with their accountant, and organizational files with their lawyer;

1 k. Used an appraisal disclosure that places an unlawful 90-day limit on the amount of
2 time in which a borrower may obtain a copy of an appraisal for which the borrower
3 has paid;

4 i. Petitioners have used a disclosure entitled "NOTICE OF RIGHT TO
5 RECEIVE AN APPRAISAL REPORT" that includes a 90-day limit on the
6 amount of time an applicant may request the appraisal; and

7 l. Failed to obtain the Superintendent's approval of their use of a computer or
8 mechanical recordkeeping system, specifically:

9 i. Petitioners failed to provide the Superintendent with advance written notice
10 seeking approval of their computer or mechanical record keeping system, as
11 evidenced by copies of their financial and other records appearing to be
12 generated from one or more computer systems.

13 4. Based upon the above findings, on February 11, 2008, the Department issued and served
14 upon Regal a Notice of Assessment, *In the Matter of the Mortgage Broker License of Regal*
15 *Mortgage Company dba Regal Online Mortgage*, No. 08F-BD069-SBD, as well as the Department's
16 Report of Examination, and two invoices, assessing Regal an examination fee in the amount of
17 \$1,125.00, and a civil money penalty in the amount of \$10,000.00.

18 5. On March 13, 2008, Regal filed a Request for Hearing to appeal the Notice of
19 Assessment.

20 6. On April 4, 2008, the Department issued a Notice of Hearing, *In the Matter of the*
21 *Mortgage Broker License of Regal Mortgage Company dba Regal Online Mortgage*, No. 08F-
22 BD050-BNK, setting a hearing at the Office of Administrative Hearings ("OAH") on May 12, 2008,
23 before Administrative Law Judge Michael Wales.

24 7. Following an Informal Settlement Conference, held on April 16, 2008, the Department
25 and Regal reached a settlement in the administrative matter, wherein Regal's president was to sign
26 the Consent to the Notice of Assessment, the civil money penalty was reduced to \$5,500.00, and the

1 scheduled hearing would be vacated.

2 8. On May 6, 2008, the Department received a letter from Mr. Ware, informing the
3 Department that enclosed was Regal's response to the Report of Examination and a check in
4 payment of the examination fee. In the letter, Mr. Ware further stated that, "IT IS MY
5 UNDERSTANDING FROM MY CONVERSATION WITH YOU THAT THE \$5,500 WILL BE
6 PAID OVER 90 DAYS BEGINNING MAY 12, 2008 FOR THE FIRST INSTALLMENT OF
7 \$1,833.33, AND THEN \$1,833.33 ON JULY 12, 2008 AND THEN THE FINAL INSTALLMENT
8 ON AUGUST 12, 2008."

9 9. On May 9, 2008, based upon notification of settlement, the May 12, 2008 OAH hearing
10 was vacated.

11 10. On May 16, 2008, the Department received from Regal the Notice of Assessment, as
12 modified with the reduced civil money penalty amount penciled in, which contained the "Consent to
13 Assessment" signed by Mr. Ware on May 15, 2008.

14 11. As of the date this Notice of Hearing is issued, Regal has failed to pay to the Department
15 any of the \$5,500.00 civil money penalty owed to the Department, pursuant to the Notice of
16 Assessment and the Consent thereto signed by Mr. Ware, on behalf of Regal, in violation of A.R.S.
17 § 6-132.

18 12. Based upon the above findings, the Department issued and served upon Regal and Mr.
19 Ware an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order
20 ("Cease and Desist Order") on October 21, 2008.

21 13. On November 14, 2008, Petitioners filed a Request For Hearing to appeal the Cease and
22 Desist Order.

23 LAW

24 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to
25 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
26 rules, and regulations relating to mortgage brokers.

- 1 2. By the conduct set forth in the Facts, Regal and Mr. Ware violated the following:
- 2 a. A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to conduct the minimum
- 3 elements of reasonable employee investigations before hiring employees;
- 4 b. A.A.C. R20-4-917(C) by failing to reconcile and update all records specified in
- 5 A.A.C. R20-4-917(B) in each calendar quarter;
- 6 c. A.A.C. R20-4-917(B)(9) by failing to maintain a complete record containing all
- 7 documents as required;
- 8 d. A.A.C. R20-4-917(B)(1) by failing to maintain all required information on their list
- 9 of all executed loan applications or executed fee agreements;
- 10 e. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6) by failing to maintain originals or
- 11 clearly legible copies of all mortgage loan transactions for not fewer than five years;
- 12 f. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e) by failing to comply with the
- 13 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
- 14 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C.
- 15 §§ 2601 through 2617), and the regulations promulgated under these acts;
- 16 g. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B) by failing to keep and maintain at all
- 17 times correct and complete records as prescribed by the Superintendent;
- 18 h. A.R.S. § 6-906(C) by failing to use a written agreement, signed by all parties, when
- 19 accepting fees and/or documents in connection with mortgage loan applications;
- 20 i. A.R.S. § 6-903(E) and A.A.C. R20-4-102 by failing to ensure that the Responsible
- 21 Individual maintained a position of active management;
- 22 j. A.R.S. § 6-906(A) by failing to notify the Superintendent prior to maintaining branch
- 23 records at their principal place of business;
- 24 k. A.R.S. § 6-906(C) by using an appraisal disclosure that places an unlawful 90-day
- 25 limit on the amount of time in which a borrower may obtain a copy of an appraisal for
- 26 which the borrower has paid; and

1 1. A.A.C. R20-4-917(A) by failing to obtain the Superintendent's approval of their use
2 of a computer or mechanical recordkeeping system.

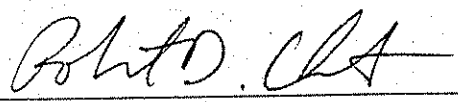
3 3. By the conduct set forth in the Facts above, Regal and Mr. Ware have violated A.R.S.
4 § 6-132 by failing to pay to the Department the civil money penalty due pursuant to the Notice of
5 Assessment and the Consent thereto signed by Mr. Ware, on behalf of Regal.

6 4. The violations, set forth above, constitute grounds for: (1) the issuance of an order
7 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
8 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
9 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
10 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
11 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-905; and (4) an order or any
12 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
13 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

14 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
15 above-described violations, the Superintendent may affirm the October 21, 2008, Cease and Desist
16 Order pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132; suspend
17 or revoke Petitioners' license pursuant to A.R.S. § 6-905; and order any other remedy necessary or
18 proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to A.R.S.
19 §§ 6-123 and 6-131.

20 DATED this 8 day of December, 2008.

21 Felecia A. Rotellini
22 Superintendent of Financial Institutions

23 By 
24 Robert D. Charlton
25 Assistant Superintendent of Financial Institutions
26 ...

1 ORIGINAL of the foregoing filed this 8th
2 day of December, 2008, in the office of:

3 Felecia A. Rotellini, Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: Susan L. Longo
6 2910 N. 44th Street, Suite 310
7 Phoenix, AZ 85018

8 COPY mailed same date to:

9 Thomas Shedden, Administrative Law Judge
10 Office of the Administrative Hearings
11 1400 West Washington, Suite 101
12 Phoenix, AZ 85007

13 Craig A. Raby, Assistant Attorney General
14 Office of the Attorney General
15 1275 West Washington
16 Phoenix, AZ 85007

17 Robert D. Charlton, Assistant Superintendent
18 Chris Dunshee, Senior Examiner
19 Arizona Department of Financial Institutions
20 2910 N. 44th Street, Suite 310
21 Phoenix, AZ 85018

22 AND COPY MAILED SAME DATE by
23 Certified Mail, Return Receipt Requested, to:

24 Regal Mortgage Company
25 dba Regal Online Mortgage
26 c/o David Ware, President
10105 E. Via Linda, Suite 103
Scottsdale, AZ 85258
Petitioners

David Ware, Statutory Agent For:
Regal Mortgage Company
dba Regal Online Mortgage
10105 E. Via Linda, Suite 103
Scottsdale, AZ 85258

David Ware, Statutory Agent For:
Regal Mortgage Company
dba Regal Online Mortgage
2575 E. Camelback Road, Suite 450
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